Office-Supreme Court, U.S.
FILED
MAY 1 1985
ALEXANDER L. STEVAS,
CLERK

(8)

No. 84-1265

In the Supreme Court of the United States

OCTOBER TERM, 1984

DUANE SKINNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

KAREN I. SKRIVSETH
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

21 pp

QUESTIONS PRESENTED

1. Whether petitioner's willful participation in a scheme to launder money by concealing material facts and preventing banks from filing required currency transaction reports violated 18 U.S.C. 1001.

2. Whether the statutory and regulatory requirement that banks file reports of currency transactions in excess of $10,000 violates their customers' rights under the Fourth and Fifth Amendments.

TABLE OF CONTENTS

Page

Opinion below 1

Jurisdiction 1

Statutes and regulation involved 2

Statement 3

Argument 6

Conclusion 14

TABLE OF AUTHORITIES

Cases:

California Bankers Ass'n v. *Shultz*, 416 U.S. 21 ..... 7, 12, 13

Haynes v. *United States*, 390 U.S. 85 13

Lawn v. *United States*, 355 U.S. 339 12

Pereira v. *United States*, 347 U.S. 1 8

United States v. *Catena*, 500 F.2d 1319, cert. denied, 419 U.S. 1047 9

United States v. *Cook*, 745 F.2d 1311, cert. denied, No. 84-5834 (Feb. 19, 1985) 8

United States v. *Dichne*, 612 F.2d 632, cert. denied, 445 U.S. 928 13

United States v. *Doe*, No. 82-786 (Feb. 28, 1984) 13

United States v. *Frady*, 456 U.S. 152 12

United States v. *Goldberg*, No. 84-1226 (2d Cir. Mar. 6, 1985) 11

United States v. *Lester*, 363 F.2d 68, cert. denied, 385 U.S. 1002 9

Page

Cases—Continued:

United States v. *Miller*, 425 U.S. 435 13

United States v. *Puerto*, 730 F.2d 627, cert. denied, No. 83-6961 (Oct. 1, 1984) 8

United States v. *Sanchez Vazquez*, 585 F. Supp. 990 10

United States v. *Sans*, 731 F.2d 1521, cert. denied, No. 84-5410 (Jan. 7, 1985) 8

United States v. *Tobon-Builes*, 706 F.2d 1092 ..... 8, 9, 10, 11

United States v. *Woodward*, No. 83-1947 (Jan. 7, 1985) 8

Constitution, statutes and regulations:

U.S. Const. :

Amend. IV 12, 13

Amend. V 13

Bank Secrecy Act:

31 U.S.C. 5313(a) (formerly codified at 31 U.S.C. (1976 ed.) 1081, 1082) 2, 5, 7

31 U.S.C. 5322 8

18 U.S.C. 2(b) 8, 9, 12

18 U.S.C. 371 3

18 U.S.C. 1001 ..... *passim*

18 U.S.C. 1341 3

18 U.S.C. 2314 3

Page

Constitution, statutes and regulations—Continued:

31 C.F.R. :

Section 103.11 5
Section 103.22(a) 2, 5, 8
Section 103.49 8

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1265

DUANE SKINNER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A2-A35) is reported at 740 F.2d 629.

JURISDICTION

The judgment of the court of appeals (Pet. App. A1) was entered on August 6, 1984. A petition for rehearing was denied on October 2, 1984.[1] The petition for a writ of certiorari was filed on January 25, 1985, and is therefore substantially out of time under Rule 20.1 of the Rules of this Court.[2] The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

---

[1]Petitioner's appendix sets forth his co-defendant James Massa's rehearing petition rather than his own (Pet. App. A36-A54). The appendix does not include the court of appeals' order denying the petition.

[2]Petitioner states (Pet. 2) that the petition was timely mailed within 60 days of the denial of rehearing, *i.e.*, on or before December 1, 1984. Petitioner provides no explanation for its arrival at the Court on

STATUTES AND REGULATION INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

31 U.S.C. 5313(a) provides:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

31 C.F.R. 103.22(a) provides:

> Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial

---

January 25, 1985. Counsel for petitioner has not filed a notarized statement setting forth details of the mailing, as required under these circumstances by Sup. Ct. R. 28.2.

institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted on all 14 counts against him in an indictment charging a scheme to defraud Stix and Company, a St. Louis brokerage firm, and to launder the proceeds. Petitioner was convicted on one count of conspiracy (18 U.S.C. 371), eight counts of mail fraud (18 U.S.C. 1341), one count of concealing a material fact (18 U.S.C. 1001), and four counts of transporting forged securities (18 U.S.C. 2314). He was sentenced to a total of 12 years' imprisonment, to be followed by five years' probation, and fined $22,000 (Pet. App. A10-A11).[3] The court of appeals affirmed petitioner's convictions for conspiracy, mail fraud, and concealment, but reversed his convictions for transportation of forged securities (Pet. App. A3).

---

[3]The prison sentence was comprised of a four-year term on the conspiracy count followed by concurrent four-year terms on seven of the mail fraud counts and a consecutive four-year term on the concealment count. Petitioner's probation was founded on his convictions on the forged securities counts and the remaining mail fraud count.

Petitioner's co-defendant James Massa was also convicted on all counts with which he was charged. His convictions were affirmed on appeal (Pet. App. A2), and his petition for a writ of certiorari is currently pending before the Court (*Massa* v. *United States*, No. 84-995). Massa was not charged with the concealment offense that petitioner here challenges, and accordingly Massa's petition and the instant one raise only unrelated issues. Co-defendant Arthur Miller, Jr. pleaded guilty (Pet. App. A10 n.2). The indictment also named Thomas Brimberry, Janice Brimberry, and Jerry Maeras as unindicted co-conspirators.

1. The evidence at trial showed a complex scheme, described in detail in the court of appeals' opinion (Pet. App. A4-A9), to loot the assets of Stix by extracting cash from ten margin accounts controlled by the conspirators. Thomas Brimberry, a margin clerk for Stix, began in 1976 to make false entries in margin accounts showing the receipt of nonexistent securities. In order to conceal the offense from auditors and regulatory agencies, Brimberry placed forged securities in the Stix vault. Over the course of several years, the conspirators embezzled $16 million from Stix by withdrawing cash on the basis of the purported equity in the margin accounts. Pet. App. A4-A5.

Petitioner was a certified public accountant and business associate of Brimberry's. Acting as a front for Brimberry, petitioner operated several corporations through which certain of the embezzled funds were funnelled (Pet. App. A7-A8). Petitioner also transferred funds between the conspirators and did "odd jobs necessary to facilitate the scheme" (*id.* at A8). He also prepared Brimberry's tax returns, showing yearly income of no more than $87,000 even though Brimberry had spent millions of dollars through petitioner during the relevant period (*id.* at A9).

2. Count 29 of the indictment charged petitioner with a violation of 18 U.S.C. 1001 in connection with his laundering of Stix funds. The evidence at trial demonstrated a scheme to conceal from the Internal Revenue Service the source of $1.5 million in embezzled funds used by Brimberry to finance his purchase of two homes (see Pet. App. A8-A9).

To fund Brimberry's purchase of a mansion in Granite City, Illinois, petitioner opened two bank accounts in the name of LDN Investments (9 Tr. 29, 34, 76, 78, 81; 10 Tr. 199). Brimberry gave his brother-in-law, co-conspirator Arthur Miller, Jr., money orders in amounts of more than $50,000 drawn on an account created with embezzled funds

(2 Tr. 130-131). Miller deposited the money orders against his line of credit at a Las Vegas casino and withdrew the money in cash, giving it to Brimberry or to petitioner (Pet. App. A8-A9). On instructions from his co-conspirators, petitioner would then take the cash and purchase cashier's checks in amounts of less than $10,000 each at different bank offices on the same day (2 Tr. 131-133; 9 Tr. 76-77). Co-conspirator Janice Brimberry testified that the purpose of the multiple purchases of cashier's checks was to evade the requirement that banks report to the Internal Revenue Service currency transactions in excess of $10,000 (Pet. App. A9, A30; see 31 U.S.C. 5313(a); 31 C.F.R. 103.22(a)). Petitioner then deposited these checks in the LDN Investment accounts. For example, the initial deposit by petitioner to one of the accounts was for $15,000, consisting of two cashier's checks for $7,500 each.[4] Both of these checks were purchased with cash by petitioner on October 2, 1980 from different branches of the Valley Bank of Nevada. GX 180A-D; 2 Tr. 135-136; 9 Tr. 30, 76; 10 Tr. 199.[5]

The evidence showed a similar scheme to finance the purchase of Brimberry's second house, a $485,000 residence in Phoenix, Arizona (2 Tr. 137). An account was opened at Stix in the name of RTS Investments, into which petitioner deposited a total of 33 cashier's checks purchased with cash from banks in Nevada, Illinois, and Missouri (9 Tr. 68-72; 10 Tr. 199; GX 10BB, 10CC, 10DD). Each check was for less than $10,000. Nineteen of the checks were purchased on April 11, 1980; petitioner acknowledged purchasing the nine checks on that date that show

---

[4]Transfers solely by check do not come within the reporting regulations for currency transfers (31 C.F.R. 103.11). Hence, the deposit did not trigger any reporting requirement.

[5]Although petitioner denied purchasing the checks (12 Tr. 66, 118), they showed that he was the remitter, and petitioner acknowledged that he deposited them to the LDN account.

him as the remitter. Petitioner also acknowledged purchasing four checks on April 30, 1980. 9 Tr. 68-70; 12 Tr. 63. Petitioner purchased two of the April 30 checks from different Illinois branches of the same bank: a $7,500 check from the Mid-America Bank and Trust Company of Edgemont and a $7,500 check from the Mid-America Bank and Trust Company of Fairview Heights (GX 10CC, 194D, 194H, 196G; Stip. 5; 9 Tr. 8, 71; 12 Tr. 63).

3. Although petitioner had not challenged the applicability of 18 U.S.C. 1001 to his money-laundering activities before the district court,[6] he argued on appeal that Section 1001 does not prohibit persons from engaging in multiple sub-$10,000 cash transactions at different banks on the same day in order to prevent banks from filing the required currency reports for transactions in excess of $10,000. The court of appeals rejected this argument, reasoning that petitioner's "clear purpose was to hide information from the IRS using the device of multiple cash transactions" (Pet. App. A30). Petitioner raised no constitutional challenge to the reporting requirements in either the district court or the court of appeals.

ARGUMENT

1. Petitioner argues first (Pet. 7-8) that he did not violate 18 U.S.C. 1001 by concealing the fact that he had exchanged more than $10,000 in currency in a single day because there is no duty to "cumulate" transactions into amounts greater than $10,000 at a single bank, which would trigger a report from the bank to the government. However that may be as a general proposition, the argument lacks merit on the facts of petitioner's case. First, petitioner waived the issue by not presenting it in the district

---

[6]Petitioner testified that he was unaware of the currency transaction reporting requirements and that he was merely following instructions from his co-conspirators (12 Tr. 63-64, 113, 136-137).

court. Moreover, in at least two instances, petitioner purchased cashier's checks totalling more than $10,000 from different branches of the same bank on the same day (see pages 5-6, *supra*). Because different branches are considered (as in fact they are) part of the same financial institution for purposes of the reporting requirements, petitioner, by his concealment, did cause the banks to fail to file required currency transaction reports. Petitioner violated Section 1001 by concealing his purchases at different branches, information that was legally required to be reported to the government. His untimely petition (see page 1 & note 2, *supra*) therefore does not squarely present the question whether a person may commit a federal offense by purchasing on the same day cashier's checks for amounts less than $10,000 each from completely different banks. In any event, the Treasury Department is currently conducting a comprehensive review of its reporting regulations with a view toward improving enforcement of the underlying statute and of the revenue and criminal laws. Questions arising under the regulations as they now stand are therefore unlikely to be of continuing importance.

a. In the Bank Secrecy Act, Congress authorized the Secretary of the Treasury to promulgate reporting requirements for banks, other financial institutions, and other participants, including individuals, in financial transactions (31 U.S.C. 5313(a), formerly codified at 31 U.S.C. (1976 ed.) 1081, 1082). The required reports "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings" — "reports of large and unusual currency transactions" are particularly important "in ferreting out criminal activity." *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 37-38 (1974). Pursuant to this statutory authorization, the Secretary has issued regulations requiring that any "financial institution" report "each deposit, withdrawal, exchange of currency or other payment or

transfer * * * which involves a transaction in currency of more than $10,000" (31 C.F.R. 103.22(a)). The regulations (*ibid.*) require that the reports "be made on forms prescribed by the Secretary and [that] all information called for in the forms * * * be furnished." Violations of the reporting requirements carry criminal penalties (31 U.S.C. 5322; 31 C.F.R. 103.49).

b. It is settled that individuals may be convicted of substantive violations of the reporting requirements (even though individuals are not themselves normally required to file reports) if they cause financial institutions to fail to file the required reports or to file inaccurate ones. See, *e.g.*, *United States* v. *Cook*, 745 F.2d 1311 (10th Cir. 1984), cert. denied, No. 84-5834 (Feb. 19, 1985); *United States* v. *Sans*, 731 F.2d 1521 (11th Cir. 1984), cert. denied, No. 84-5410 (Jan. 7, 1985). This follows under 18 U.S.C. 2(b), which provides that "[w]hoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." See generally *Pereira* v. *United States*, 347 U.S. 1, 7-8 (1954).

The same principles have led courts to conclude, without exception, that an individual may be liable under 18 U.S.C. 1001 for concealing material facts — *i.e.*, the existence, source, and transfer of more than $10,000 in currency — by causing banks to fail to file currency transaction reports. See, *e.g.*, *United States* v. *Puerto*, 730 F.2d 627 (11th Cir. 1984), cert. denied, No. 83-6961 (Oct. 1, 1984); *United States* v. *Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983); see also *United States* v. *Cook*, 745 F.2d at 1315-1316 n.2; cf. *United States* v. *Woodward*, No. 83-1947 (Jan. 7, 1985) (per curiam). As the court held in *Puerto* (730 F.2d at 632-633; emphasis in original):

> [A] person violates 18 U.S.C.A. § 1001 and [the currency reporting statute] when he willfully and knowingly causes a financial institution not to *accurately* report currency transactions that it has a duty to report and would report accurately if it knew about the transaction.
>
> * * * * *
>
> A defendant is guilty of concealment of a material fact [in violation of 18 U.S.C. 1001] when he causes either an inaccurate [currency transaction report] or no [such report] to be sent by the financial institution to the IRS.

It is clear, then, that petitioner was properly convicted of violating Section 1001 so long as he concealed information that, had the banks in question known of it, would have led them to file currency transaction reports with the federal government.[7]

---

[7]There is no question but that petitioner's practice of purchasing checks in amounts less than $10,000 in order to "launder" large sums of money constituted a "trick, scheme, or device" within the ambit of Section 1001, nor is there any question of the willfulness of petitioner's conduct. Although the indictment did not expressly charge a violation of 18 U.S.C. 2(b) in conjunction with Section 1001, it was nonetheless legally sufficient to charge the proper offense. See *Tobon-Builes*, 706 F.2d at 1099 n.3; *United States* v. *Catena*, 500 F.2d 1319, 1323 (3d Cir.), cert. denied, 419 U.S. 1047 (1974); *United States* v. *Lester*, 363 F.2d 68, 72-73 (6th Cir. 1966), cert. denied, 385 U.S. 1002 (1967). The indictment charged that petitioner's purchase of multiple cashier's checks in amounts less than $10,000 was for the purpose of "evad[ing] the preparation of Currency Transaction Reports required [of banks] by the Internal Revenue Service" (Count 1, ¶ 8.F.49, incorporated by reference in Count 29). Count 29 charged expressly that petitioner's scheme "was causing [the banks] to fail to file IRS Forms 4789 (Currency Transaction Reports)." Among petitioner's check purchases charged in Count 29 were those made on October 2, 1980, at different branches of the Valley Bank of Nevada and those made on April 30, 1980, at different branches of the Mid-America Bank and Trust Company.

c. Petitioner's contention (Pet. 7-8) that he personally had no duty to report the transactions in question is thus beside the point: the appropriate inquiry is whether the banks, had they known of his activities, would have had a duty to report petitioner's currency dealings.[8] Petitioner may be correct that, in general, transactions at wholly different banks need not be cumulated by those banks and reported if the sums involved exceed $10,000, so long as the transactions at any one financial institution do not exceed $10,000. But petitioner's guilt does not turn upon the answer to that question. The evidence at trial showed (pages 5-6, *supra*) that on at least two separate occasions petitioner purchased cashier's checks totalling more than $10,000 at different branches of the same bank on the same day. The prescribed reporting form, which is incorporated by reference in the regulations (page 8, *supra*) and which was introduced into evidence at trial (9 Tr. 61; GX 367), requires that different branches of the same bank be treated as a single bank, *i.e.*, that all transactions on a single day at the various branches be cumulated and reported if their total exceeds $10,000. *United States* v. *Sanchez Vazquez*, 585 F. Supp. 990, 993 (N.D. Ga. 1984) ("if there are multiple cash transactions at different branches of the same financial institution (i.e., bank) which exceed $10,000, then that particular bank must file a [currency transaction report]"). Petitioner caused the Valley Bank of Nevada and the Mid-America

---

[8] As the court stated in *Tobon-Builes* (706 F.2d at 1099):

> [T]he requirement that a defendant must have a legal duty to disclose before he can be convicted of concealment under § 1001 has no application where, as here, the government charged and proved that [defendant] willfully and knowingly caused financial institutions not to report currency transactions that they had a duty to report and would have reported if they had known about such transactions.

Bank and Trust Company to fail to file the required reports. These facts sufficiently support his conviction for a violation of 18 U.S.C. 1001.[9]

In view of the correctness of petitioner's conviction, his waiver of the issue he seeks to raise here,[10] the somewhat unusual facts of the case, and the lack of a conflict among the circuits,[11] review by this Court is unwarranted.

d. This conclusion is reinforced by the uncertain future of the reporting regulations as they now stand. The Secretary of the Treasury, in consultation with the Department of Justice, is actively considering changes in the currency transaction reporting regulations. Material changes in the treatment of transactions involving cashier's checks are among those being considered. Accordingly, definitive

---

[9]Moreover, petitioner properly could have been indicted and convicted for violating the reporting requirements because his own activities as a money launderer qualified him as a "financial institution" with a duty to report his transactions. *United States* v. *Goldberg*, No. 84-1226 (2d Cir. Mar. 6, 1985).

[10]Had petitioner presented his argument in the district court, more specific jury instructions might have been appropriate (we note that petitioner does not challenge the instructions that were given). Nonetheless, the facts underlying petitioner's conviction, many of which are not in dispute, were sufficiently established at trial. In particular, petitioner never questioned that checks totalling more than $10,000 had been purchased from different branches of the same bank on the same day. Indeed, petitioner acknowledged that he purchased two of the checks in question (see page 6, *supra*). The admitted facts therefore are enough to show a violation of Section 1001, and the indictment adequately charged the offense (see note 7, *supra*).

[11]Indeed, the facts of this case are quite similar to those in *United States* v. *Tobon-Builes, supra*, where the court sustained a conviction under 18 U.S.C. 1001. There, the defendant and an accomplice simultaneously purchased cashier's checks for $9,000 each at the same bank (706 F.2d at 1094-1095). The court had no difficulty in concluding that the defendant and his accomplice acted as a single "person" and that their simultaneous purchases were appropriately considered as a single transaction in excess of $10,000, which would have been reportable had the bank been aware of the facts (*id.* at 1094).

interpretation of the regulations by this Court is not required at this time.

2. Petitioner's constitutional challenges (Pet. 8-13) were not raised in either court below and have therefore been waived, as there are no exceptional circumstances here that would justify review by this Court in the first instance. See, *e.g., United States* v. *Frady*, 456 U.S. 152, 163 & n.14 (1982); *Lawn* v. *United States*, 355 U.S. 339, 362-363 n.16 (1958). In any event, petitioner's claims are without merit.

a. Petitioner's argument under the Fourth Amendment (Pet. 8-11) rests entirely on his premise (*id.* at 10) that the court of appeals' decision "places * * * a duty upon private individuals to cumulate one or more financial transactions" into amounts "greater than $10,000." As we have demonstrated (pages 10-11, *supra*), petitioner's conviction rests on no such duty, but rather on his causing the banks to violate their duty to file required reports of their currency transactions with petitioner. Petitioner did not violate the law by failing to cumulate his own transactions, but by dividing certain of them between branches of the same bank so that the bank would not be aware that he had in fact exchanged more than $10,000 in currency on a single day. Certainly nothing in the Fourth Amendment immunizes such concealment; if it did, countless prosecutions under 18 U.S.C. 1001 would be rendered suspect.[12]

---

[12]Nothing in *California Bankers Ass'n* v. *Shultz, supra*, casts doubt on the validity of the regulations as applied to petitioner. His contention (Pet. 9) that any extension of the reporting requirements beyond those at issue in that case would be unconstitutional is erroneous. Justice Powell, joined by Justice Blackmun, wrote in his concurring opinion (416 U.S. at 78; emphasis added) that a "*significant* extension of the regulations' reporting requirements * * * would pose substantial and difficult constitutional questions." (Part of this quotation is incorrectly attributed by petitioner (Pet. 8) to the opinion of the Court.) No extension, significant or otherwise, is involved here. The reporting regulations have not been extended to individuals. Rather, by operation of 18 U.S.C. 2(b), individuals may violate the law by causing banks to

b. Petitioner's argument under the Fifth Amendment (Pet. 12-13), like that under the Fourth Amendment, seems to rest in large part on his unduly broad interpretation of the decision below: he states (*id.* at 12; emphasis in original) that his privilege against self-incrimination has been "violated by the reporting requirements of the Bank Secrecy Act, *as interpreted* by the Eighth Circuit Court of Appeals." Whatever the precise scope of the reporting requirement at issue in this case, however, petitioner's argument that it violates the Fifth Amendment is meritless. Petitioner was not compelled to make any disclosure because he was not compelled to engage in large-scale currency transactions. Having voluntarily purchased the cashier's checks in question, petitioner is in no position to argue that the information he should have provided in connection with those purchases was compelled. See *United States* v. *Doe*, No. 82-786 (Feb. 28, 1984). Moreover, petitioner's transactions necessarily could not be kept completely private in view of the banks' involvement in them. Cf. *United States* v. *Miller*, 425 U.S. 435 (1976). The court has denied certiorari in a case raising a Fifth Amendment claim similar to petitioner's, and there is no reason for a different result here. *United States* v. *Dichne*, 612 F.2d 632, 638-641 (2d Cir. 1979), cert. denied, 445 U.S. 928 (1980) (Bank Secrecy Act's reporting requirement for transactions involving the transport of currency into or out of the United States does not violate the Fifth Amendment).

Petitioner's reliance (Pet. 12) on *Haynes* v. *United States*, 390 U.S. 85 (1968), is misplaced. That case involved a statute making it an offense to possess such weapons as

---

fail to meet their obligations under the regulations. This is the violation with which petitioner was charged (see note 7, *supra*). Moreover, the Court suggested in dictum in *California Bankers Ass'n* that even if the reporting requirements were directed at individuals, they would pass muster under the Fourth Amendment (416 U.S. at 60).

unregistered machine guns and sawed-off shotguns. Almost anyone registering such a weapon would be "immediately threatened by criminal prosecutions" (*id.* at 96) because he would be acknowledging possession of a weapon that had probably been obtained illegally. Unlike the petitioner in *Haynes*, who was required to register his weapon, petitioner was not compelled by the government to do anything. Moreover, the currency transaction reporting requirements relate to transactions that are generally legal. Persons who engage in currency transactions, unlike persons who possess sawed-off shotguns, are not " 'inherently suspect of criminal activities' " (*ibid.*; citation omitted).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

REX E. LEE
Solicitor General

STEPHEN S. TROTT
Assistant Attorney General

KAREN I. SKRIVSETH
Attorney

MAY 1985

DOJ-1985-05